

September 4, 2024

**VIA ECF**

David J. Smith  
Clerk of Court  
United States Court of Appeals for the Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

**Re: *Dershowitz v. Cable News Network, Inc.*, Case No. 23-11270**

Dear Mr. Smith:

We represent Defendant-Appellee Cable News Network, Inc. (“CNN”). We write pursuant to Federal Rule of Appellate Procedure 28(j) to respond to Dershowitz’s notice of supplemental authority concerning *Palin v. New York Times Co.*, 2024 WL 3957617 (2d Cir. Aug. 28, 2024). Nothing in *Palin* supports reversal. In fact, the reasoning in *Palin* weighs in favor of affirming Judge Singhal’s decision.

*Palin* recognized that to prove actual malice by clear and convincing evidence, “[i]t is not enough for the plaintiff merely to assert ‘that the jury might, and legally could, disbelieve the defendant’s denial of legal malice.’” *Id.* at \*8 (citation omitted) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986)). The Second Circuit reversed the district court’s Rule 50 decision after trial because it found that the plaintiff went far beyond mere assertions, and instead set forth “concrete evidence” from which a jury could clearly and convincingly find actual malice. *Id.* Such “concrete evidence” included the defendant’s testimony, prior knowledge, and contemporaneous research establishing that the defendant read at least three articles “casting significant doubt” on the defendant’s statements. *Id.* at \*8-11. It was the existence of this contrary concrete evidence that made it improper for the district court to simply credit the defendant’s testimony.

While Dershowitz argues *Palin* should cause this Court to reject CNN’s allegedly “self-serving” testimony, *Palin*, in fact, confirms that it would only be proper to do so if Dershowitz had set forth contrary concrete evidence from which a jury could clearly and convincingly find actual malice. Dershowitz entirely failed to meet that burden. In stark contrast to *Palin*, Dershowitz identified *no* contrary research that CNN reviewed while preparing the statements at issue. Indeed, the countless contemporaneous news reports *supported* CNN’s interpretation. CNN’s Br. at 9-11, 37 & n.14.

Finally, Dershowitz baldly mischaracterizes the CNN speakers' testimony and asserts they somehow admitted they were "lazy and incompetent." That could not be further from the truth. In fact, all of CNN's witnesses stood by their reporting, believed in the accuracy of the statements, and still do to this day. CNN's Br. at 11-17, 22-24.

Respectfully submitted,

*/s/ Katherine M. Bolger*

Katherine M. Bolger

cc: All counsel of record (via ECF)